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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 3353 of 2006
Date of decision: 11.9.2007

Braham Parkash

.....Appellant

Versus

Badlu

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sameer Rathore, Advocate for the appellant.

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RAJESH BINDAL, J.

This is plaintiff's second appeal against the concurrent findings of fact by both the Courts below whereby suit for specific performance filed by him was dismissed.

The claim made by the appellant/plaintiff was that on May 8, 1995 the respondent entered into an agreement to sell with him of his share to the extent of 21 kanals 9 marlas in a large chunk of land. The deal was struck at Rs. 2,20,000/- per acre. A sum of Rs. 59,000/- was paid as earnest money at the time of execution of the agreement. The sale deed was to be executed upto November 30, 1995. It is further claimed by the appellant/plaintiff that on November 30, 1995, his manager Kamal Sethi remained present in the office of Sub Registrar, Nuh but the respondents did not turn up. A legal notice dated November 28, 1995 followed by another notice dated March 15, 1996 remained unresponded. It was on or about of April 28, 1996 that the owner refused to execute the sale deed, which provided a cause of action to the appellant/plaintiff to file the suit.

Both the Courts below negatived the claim of the appellant/plaintiff finding that the agreement to sell relied upon by him was

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full of suspicious circumstances. There was no reason given as to why the agreement to sell was not got scribed from a regular scribe or an Advocate when admittedly the same was executed in Tehsil Complex at Nuh where regular scribe and Advocates are available. The person from whom the stamp papers were purchased or the typist, who typed the agreement to sell were not disclosed. Witness to the agreement, namely, Shahbudin son of Abdul Razak, who was a material witness, was not examined by the appellant/plaintiff. Even though, it was claimed that appellant got his presence marked before the Sub Registrar, Nuh on November 30, 1995 through his Manager Kamal Sethi. However, in his cross examination Kamal Sethi stated that he never worked as Manager of the appellant. Another fact, which was found by both the Courts below creating suspicion was that though the land was situated in village Badeki but no Numberdar or Sarpanch or member panchayat or any other resident of the area was a witness to the agreement. Once it had come on record that person, who got his presence marked before the Sub Registrar on the alleged date was not the manager of the appellant/plaintiff, even willingness of the appellant/plaintiff was also not proved. Further the Courts below found that sending of notice dated November 28, 1995, requiring the respondent to be present before the Sub Registrar on November 30, 1995 for execution of the sale deed, was nothing else but an eye wash as sufficient notice was not there and the efforts was just to create an evidence. Still further admitted facts on record are that agreement was dated May 8, 1995 and according to the appellant the sale deed was to be executed upto November 30, 1996. For the execution of the sale deed notice was issued by the appellant on November 28, 1995 and when the respondent did not present himself before the Sub Registrar, a second notice was got served on March 15, 1996 and thereafter it is alleged that on or around April 26, 1996, respondent refused to execute the sale deed but still the present suit was filed by the appellant more than two years thereafter on May 4, 1998 for which there is no explanation forthcoming.

On a consideration of entire material on record, which is briefly summed up in the preceding paras, I am of the opinion that the findings

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recorded by both the Courts below cannot in any manner be held to be perverse, so as to require interference by this Court in Regular Second Appeal.

Accordingly, the appeal is dismissed in limine.

September 11, 2007 **(Rajesh Bindal)**
Pka **Judge**